



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 18, 2023

IN THE MATTER OF:

Appeal Board No. 627896

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627894, 627895 and 627896, the employer appeals from the decisions of the Administrative Law Judge filed January 27, 2023, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective May 24, 2022, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$5,544.00 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$831.60 on the basis that the claimant made a willful misrepresentation to obtain benefits.

A hearing was held at which testimony was taken. There were appearances on behalf of the claimant and the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken regarding the circumstances under which the claimant's separation from employment occurred before all the issues are decided.

To that end, we have determined that James Czachur, the owner of the company, should appear at the remand hearing. Mr. Czachur should be questioned about a statement he purportedly gave to the Department of Labor on August 22, 2022, in which he contends that he was present at the start of the conversation between the claimant and Mr. Krawczyk on the claimant's last day of work, and questioned in detail about what he witnessed.

The claimant shall also be questioned about his responses in the Department of Labor questionnaire he completed and signed on June 9, 2022 and provided with an opportunity to explain why his responses to question number 8 on that document differ from his sworn testimony. He should also be questioned about his own August 22, 2022 statement to the Department of Labor. The Administrative Law Judge shall also question the claimant he did not discuss the reason for his discharge with Mr. Czachur.

The afore-mentioned statements and questionnaire should be entered into evidence after the appropriate confrontation.

Mr. Krawczyk should appear at the remand hearing and be questioned about the claimant's testimony that he told Mr. Krawczyk that he needed to leave for the rest of the day because of his back problem; that he would return the next day; and that he would make a certain delivery on his way home. Mr. Krawczyk should also be questioned about how the claimant responded when directed to return the company car; and whether he, or anyone else, had any conversations with the claimant when the car was returned and, if so, what was discussed.

The parties may produce any other relevant witnesses or documents. The Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER